

IN THE DISTRICT COURT OF PONTOTOC COUNTY
STATE OF OKLAHOMA

Elders Hardy Webb, Ken Nessel, & John
Turner, being a majority of the lawful
members of the Board of Elders of Evangelistic
Temple, individually and jointly, on behalf of
the members of Evangelistic Temple,
a non-profit Oklahoma Corporation,

Plaintiffs,

vs

Rev. Jesse Rodgers, and
Evangelistic Temple
of Ada, of the State of Oklahoma,
a Corporation without capital stock, and
Jim Cauthen, and Gene Davis, claimants as
interim Members of the Board of Elders and
as Directors; and Clyde Leach, Elder and
Board Member;

Defendants.

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JAN 21 2000

WAYNE JOPLIN, Court Clerk
Pontotoc County, Okla.
By Jamie R. [Signature] Deputy

Case No. C-2000-24

**VERIFIED APPLICATION FOR A DETERMINATION OF THE RIGHT OF
PLAINTIFFS AND DEFENDANTS TO HOLD OFFICE AS ELDERS AND DIRECTORS
OF
EVANGELISTIC TEMPLE OF ADA**

AND

**VERIFIED APPLICATION FOR A WRIT OF MANDAMUS SETTING A TIME AND
PLACE BEFORE THE COURT FOR A MEETING OF THE ELDERS AND THE
DIRECTORS AND REQUIRING THE ATTENDANCE OF THE REV. JESSE
RODGERS AT A MEETING OF THE ELDERS AND BOARD OF DIRECTORS**

1. The plaintiffs are each long serving Elders and Directors of the defendant Church. The defendant Church is a Non-Profit Corporation without capital stock. The plaintiffs, individually and jointly, as the lawful majority of the Board of Elders and the Board of

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X

the defendant church corporation, bring this action on their behalf and on behalf of the membership of Evangelistic Temple.

2. The defendant Rev. Jesse Rodgers is the President of the Board of Elders and the President of the corporation, known as Evangelistic Temple of Ada, of the State of Oklahoma.
3. During the week of January 13, 2000, to the present, the defendant Rev. Jesse Rodgers, has abrogated unto himself the power to arbitrarily remove two of the five members of the board of the church, and to replace them, instantter, with appointments of his own choosing.
4. The persons selected by the Rev. Jesse Rodgers to replace Hardy Webb and Ken Nessel are Jim Cauthen, and Gene Davis, each of which now claims some right to sit as an elder and board member in the place of Hardy Webb and or Ken Nessel.
5. Such action is in contravention of Article VII Section 6, which requires the approval of the Board of Elders for the removal of any Deacon or Elder.
6. Further, the Rev. Jesse Rodgers has attempted to use interim appointments, to the Board of Elders in order to gain complete and total personal control over the Church Corporation and all of its assets, in violation of the Evangelistic Temple Constitution and Bylaws. Such interim appointments are not approved by the 2/3rds majority of the lawful Board of Elders and until such approval is given, they may not serve.
7. A crisis in the Church now exists and the resolution of this dispute constitutes an emergency, requiring an expedited hearing, else the Church may be irreparably damaged by splintering of loyalties and membership.
8. 18 O.S. §1070 authorizes this court, upon application to set a hearing and to determine

the rights of persons to hold office in corporations such as the defendant corporation.

9. 12 O.S. § 1451 authorizes this court, upon application, to issue a writ of mandamus to a "corporation or board or person" to compel the performance of any act which the law specifically enjoins as a duty, resulting from the office, trust or station.


RELIEF REQUESTED

10. The plaintiffs seek an Order of this Court declaring that the lawful members of the Board of Elders of Evangelistic Temple of Ada, of the State of Oklahoma are the following, and no others:

A) Rev. Jesse Rodgers,
B) Hardy Webb,
C) Ken Nessel,
D) John Turner, and
E) Clyde Leach.


11. Ordering an immediate meeting of the Board of Elders, consisting of the members set forth above, and no others, for the purpose of conducting any and all Church Business, including consideration of personnel matters and the restoration of the proper and pre-existing control over the church funds and bank accounts.
12. Ordering the Rev. Jesse Rodgers to attend such meeting so that there may be a quorum.
13. Ordering that such meeting be held in the District Court under the supervision of the Court, to ensure an orderly proceeding.
14. Declaring that the Rev. Jesse Rodgers, nor any other person, may summarily dismiss any member of the Board of Elders, without approval of a majority of the remaining members of the Board of Elders.
15. For such other and further relief as to which the parties may be entitled.

Respectfully submitted this 20 day of January, 2000.

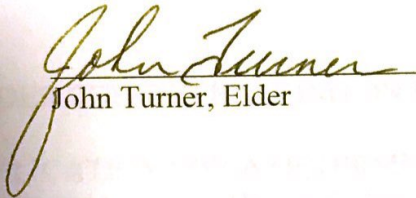

GEORGE W. BRALY, OBA #1056
Attorney for the Applicants

OF COUNSEL:

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Hardy Webb, Elder


Ken Nessel, Elder


John Turner, Elder

VERIFICATION

Subscribed to and sworn to before me, a notary public of the State of Oklahoma, this
21st day of January, 2000.

[SEAL]


Notary Public

My commission expires: 11-15-03.

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Pontotoc County, Okla.
By *[Signature]* Deputy

BRIEF

Now come Applicants who assert that this Court has jurisdiction over the subject matter of this application and, in support thereof, show the following:

This action deals with a determination as to which of two "factions" is the proper group to control the property of the Evangelistic Temple in Ada, Oklahoma. The facts, as they apply to this issue, are as follows:

FACTUAL SUMMARY

Evangelistic Temple is "congregational" in nature, rather than "hierarchical". It was not

formed by, and has no affiliation with, any larger church entity. No larger church entity has control or jurisdiction over it. The specific By-Laws of the church make it clear that Evangelistic Temple is not, however, governed as a democracy. All governmental authority is posited in the Board of Elders. (See By-Laws, pages 11 and 27, copies attached). Prior to January 12, 2000 (and thereafter, Applicants assert) the Board of Elders consisted of:

Herbert Webb
John Turner
Kenyon Nessel
Clyde Leach
Jesse Rodgers (Pastor)

The By-Laws clearly require that, in order for an Elder to be removed, there must be a vote by the Board of Elders to so remove the Elder. (By-Laws, pages 18-19 and 23, copies attached). Further, the Elder who is the subject of the removal motion may not vote on the motion (By-Laws, page 18, copy attached). Thus, assuming a motion, there would be four (4) votes available, and passage of such motion would require three (3) affirmative votes (a majority). The facts in this case disclose that there was never even a vote to remove any of the Elders. However, on or about January 13, 2000, Pastor Rodgers announced at a church service that Elders Webb and Nessel were no longer Elders, and that they had been replaced by Respondents Cauthen and Davis. Additionally, it is significant that on January 12, 2000, the Board of Elders, by proper vote, took action to relieve one Jesse DeMartino as assistant Pastor. (Copy of Minutes attached) It appears that the Pastor and his "new Elders" have ignored this lawful action and are continuing to pay the Assistant Pastor, such payment being with church property.

ARGUMENT

Oklahoma law is clear that "[a] civil court *may* determine the regularity of a church meeting

and who is a member of the church for the purpose of determining the identity of those individuals who collectively represent the church and are entitled to control church property." *Fowler v. Bailey*, 844 P.2d 141, 146 (Okla. 1992) [emphasis in original], precisely the issue in this case and *Higgins v. Maher*, 210 Cal.App.3d 1168, 1173, wherein that court states that "...[w]here a schism has developed within a church, resulting in dispute as to who holds ultimate authority for congregational or corporate decisions, civil courts are unavoidably put to the task of identifying the true or legitimate authority. [citations omitted] To do otherwise would be to deny all legal protection to churches and [allow] church disputes to be settled by physical force."

CONCLUSION

This is not an ecclesiastical matter. It is a matter which, if not resolved by the courts, could well result in the physical force referred to in *Higgins, supra*. For the reasons stated, Applicants assert that the Court does have jurisdiction over this controversy.

Respectfully submitted this 1st day of February, 2000.



GEORGE W. BRALY, OBA #1056
H. BUCKMASTER COYNE, JR., OBA #17252

OF COUNSEL:
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CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of February, 2000, a true and correct copy of the above and foregoing document was mailed, with postage thereon, to:

D. Craig Shew
Smith, Shew, Scrivner & Corbin, P.C.
P.O. Box 1373
120 E. 14th Street
Ada, OK 74821-1373



H. BUCKMASTER COYNE, JR.

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EVANGELISTIC TEMPLE

CONSTITUTION AND BY-LAWS

**EVANGELISTIC TEMPLE
P. O. BOX 39
ADA, OKLAHOMA 74821
405 332-0044**

JOHN W. KEITH, Th.d., PASTOR

Section 1

This government shall be vested in the Pastor and Elders, whom the Holy Spirit has made overseers of the flock (Acts 20:28; I Peter 5:1-4). This ruling body shall be comprised of: 1) The senior pastor and 2) members who are elders, called of God to be Administrative brethren (Rom. 12:8), who rule with diligence. They shall not act selfishly or as lords over God's heritage (I Peter 5:3), but take the oversight of the Assembly with the spiritual well-being of the members in mind, as a loving shepherd caring for his sheep. This group of members shall be known as the "church board." They will also be the directors of the corporation. They are to seek the will of God in all matters, to be led by the Spirit, and above all, follow the admonition of the Word. They may appoint as deemed necessary other individuals whom they may choose to have special powers to fulfill the purpose for which they have been appointed. Major decisions shall be brought before the Assembly for prayerful consideration, and the Elders shall seriously consider the advice and suggestions of the Assembly.

Section 2.

All property of the Church shall be deeded to the Church in its corporate name. The President (Pastor) & Secretary shall have the power to carry out all of the purposes & powers set forth in Article III, unless other individuals are appointed to act in behalf of these officers. The signature of the President & Secretary shall be sufficient certificate for negotiating any and all powers provided for in said articles.

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Hardy Webb
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government is that of democracy, nor do we believe that democracy was practiced in the New Testament Church. Rather the Church is a theocracy in which God has chosen and ordained certain men who are given by Christ as 'gifts' to the Church for the protection, development, shepherding and leading of His Body. These men are Elders in the New Testament sense, who care for the flock of God by taking the oversight thereof as commanded in the Scriptures.

Democracy, a time honored institution in America, is perhaps the best system of government in the secular world, if not the most efficient. It works well in a natural world when men do not trust one another and need representation with checks and balances; where men are not divinely called to their office; and where there is no better, higher or more noble system available. However, we believe God has given a plan for His people which allows Him to still direct the affairs of men through the leadership of the Holy Spirit, by people chosen for their office and ministry.

Therefore, in accordance with these principles, the government of this Church will be centered in Elders who are to function in the scriptural definitions of their office and ministry; such men meeting the scriptural qualifications. They will rule with the best interests of the local Assembly at heart and not selfishly as "lords over God's heritage." They will be responsible first and foremost to the God who called them, and will communicate openly and freely with the congregation in deciding and maintaining the will of God relative to decisions.

member. 2)any area of church life where assistance & counsel is needed: 3)determination of salaries. A majority present at any meeting of the Board of Elders shall constitute a quorum, provided all were notified to be present. All Elders shall have equal voting power except on the issues related to his own office. In such instance he will have no voting privileges. No Elder shall gather person in loyalty to himself, but serve unselfishly to support the ministry of his office, the church and the Pastor with whom he is called to work. Any gathering of a group unto himself, personally, shall be relieved of the office and all attendant duties. Above all, an Elder shall promote unity and loyalty among the members, serving the Body in love.

C. Tenure of Office.

An Elder in this local church body serves for one year-and can be reappointed by the board of Elders (by 2/3 vote of the Elders) for a 3 year period. After the 3 year period he will be in office indefinitely or until he: 1)asks the Board of Elders to relieve him of spiritual oversight in the congregation: 2)Forfeits his eldership by disqualifying himself spiritually or scripturally. Any person so recognized in ministry should be sensitive to their own spiritual life and if unable to effectively and harmoniously serve to the glory of God, ask the Elders to release him from specific ministry & then humbly receive counsel & strength from the Board of Elders (I Peter 5:3,5). If an Elder refuses to submit to the Word of God & the Board & discipline of his fellow Elders, he will be disciplined and removed

The Pastor shall have authority to declare any office or position vacant after having discussed and approved the matter with the Board of Elders. Grounds for such action shall be:

1. Unscriptural conduct
2. Doctrinal departure from tenets of faith
3. Incompetency in office
4. Failure to cooperate with the Church program or policy, or leadership.
5. General negative attitude towards Pastor or other authority and thereby creating an undercurrent.

Any incumbent under such charges shall have opportunity for a fair & impartial hearing before the Elder Board. The decision of the Board of Elders shall be considered final & the incumbent may have no further recourse. Any property, reports, records, etc., of the Church in possession of such person shall be returned to the Church office. Vacancies may be temporarily filled by Pastoral appointment until final & official decision is made by the Pastor & the Elder Board.

by the Board of Elders and the congregation informed of their action. (Gal.6:1; Matt. 18:15-17; I Tim. 5:19,20).

In Case of the vacancy of the Pastoral Office, an Elder shall be appointed by the Elder Board to serve as Corporate President.

D. Number of Elders.

The number of functioning Elders is determined by the Holy Spirit's choosing and the other Board Members recognition of them. The number shall also be determined by the growth and necessity of meeting the needs of the church body, however, as long as there are qualified individuals, there shall be a minimum of three Elders to oversee the spiritual needs of this Assembly.

E. Elders shall also serve as the Directors of the Corporation.

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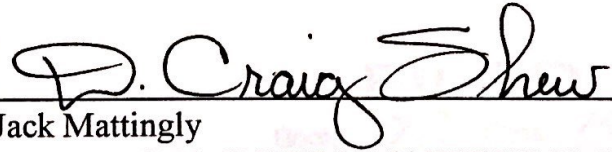
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FEB 14 2000
WAYNE JOPLIN, Court Clerk
Pontotoc County, Okla.
By [Signature] Deputy

MOTION TO DISMISS

COME NOW the Defendants herein and enter their special appearance and move the Court to dismiss this action because the Court lacks subject matter jurisdiction and therefore has no personal jurisdiction over the Defendants, Plaintiffs do not have standing to bring such an action, and because venue in this Court is improperly laid. In support thereof, Defendants direct the Court's attention to their brief filed herein.

WHEREFORE, Defendants pray for an order of this court dismissing Plaintiffs' action and for any other relief which the Court deems just and equitable.

Respectfully submitted,



Jack Mattingly
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Seminole, OK 748180070
(405) 382-3333; Fax: (405) 382-6303

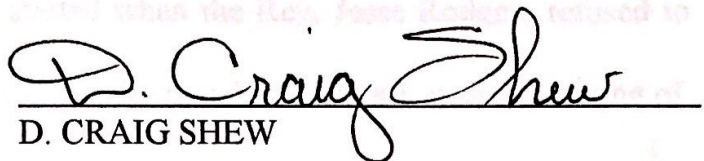
D. Craig Shew, OBA #10608
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Post Office Box 1373
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(580) 332-9033; Fax: (580) 332-9291

Attorneys for the Defendants

CERTIFICATE OF MAILING

I certify that on the 14th day of February, 2000, I hand delivered a true and correct copy of the foregoing instrument to the following person at the address indicated:

George W. Braly
Braly & Braly and Coyne
P. O. Box 2739
Ada, OK 74820


D. CRAIG SHEW

STATE OF OKLAHOMA

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FEB 14 2000

WAYNE JOPLIN, Court Clerk
Pontotoc County, Okla.

By Deputy

BRIEF IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

INTRODUCTION

As Plaintiffs describe it, "[t]his dispute started when the Rev. Jesse Rodgers refused to consult with the Board of Elders before making changes in church employees, including firing of church employees." Plaintiffs' Statement to the Members of Evangelistic Temple, hereinafter "Plaintiffs' Statement"; Exhibit A. Plaintiffs contend that the Pastor must seek and obtain the approval of the Board of Elders with respect to hiring and firing church employees, but apparently, Pastor Rodgers did not agree with this position. *Id.* During the course of this dispute, a second

dispute arose which began with an alleged wire tap on the Evangelistic Temple's phone system and resulted in part, along with other reasons, in the termination of Elders Webb and Nessel, both of whom are Plaintiffs herein. *Id.* Plaintiffs assert in their Application that the termination was in contravention of Article VII, Section 6, and assert in their Statement the termination was "in complete violation of the Church rules, constitution, by-laws, and long-standing practice." Application at ¶¶ 3-5; Plaintiffs' Statement; *See, also* Plaintiffs' Brief at Factual Summary. Plaintiffs further allege that since Nessel was previously the Secretary/Treasurer, the interim Elder appointments are an attempt to gain personal control over the Church Corporation and its assets in violation of the Church's Constitution and by-laws, and according to Plaintiffs' Statement, this circumvents long-standing and well-established Church policy. Application at ¶ 6; Plaintiffs' Statement.

Plaintiffs note in their Statement that in order to resolve this dispute, Plaintiffs are seeking a review in this Court "to confirm their status as three of the five lawful members of the Board of Elders of Evangelistic Temple of Ada, Oklahoma." Specifically, Plaintiffs seek in their Application that the Court: declare that Rodgers, Webb, Nessel, Turner, and Leach are the only lawful members of the Board of Elders; order an immediate meeting of the Board; order Pastor Rodgers to attend such a meeting; supervise such a meeting; and, declare that no elder can be summarily dismissed without a majority vote of the remaining members. Application at ¶¶ 10-14.

ARGUMENT AND AUTHORITIES

Since the early days of American independence, the First Amendment of the United States Constitution has guaranteed religious freedom: "Congress shall make no law respecting an

establishment of religion, or prohibiting the free exercise thereof . . .” U.S. Const. amend. I.

Oklahoma case law has long been, and is still firmly committed to the free exercise clause. *Hadnot v. Shaw*, 1992 OK 21, 826 P.2d 978, 988 (the Free Exercise Clause prohibits civil courts from inquiring into any phase of ecclesiastical decision-making—its merits as well as procedure). Likewise:

Civil courts will not review acts of religious organizations relating solely to internal ecclesiastical affairs for the sole purpose of ascertaining whether they are in accord with policy, discipline, or usages of the organization.

Fowler v. Bailey, 1992 OK 160, 844 P.2d 141, 144 [citing *First English Lutheran Church v. Block*, 195 Okla. 579, 159 P.2d 1006, 1008 (1945)]. Thus, internal ecclesiastical procedure need not meet any constitutional concept of due process. *Hadnot* at 826 P.2d 988 [citing *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 96 S. Ct. 2372, 49 L. Ed. 2d 151 (1976) (hereinafter “*Serbian*”); *Nunn v. Black*, 506 F. Supp. 444, 448 (W.D. Va. 1981), *aff’d*, 661 F.2d 295 (4th Cir. 1981), *cert. denied* 454 U.S. 1146, 102 S. Ct. 1008, 71 L. Ed. 2d 299 (1982)]. In certain instances, however, civil courts do have jurisdiction to resolve church property disputes. *Jones v. Wolf*, 443 U.S. 595, 61 L. Ed. 2d 775, 99 S. Ct. 3020 (1979).

The essence of Plaintiffs’ allegation in their Application is that Elders Webb and Nessel were arbitrarily removed from the Board of Elders in contravention of the Church’s constitution and by-laws.¹ Plaintiffs’ Application. Plaintiffs further state that such a removal violates long-standing and well-established church rules, practices and policies. Exhibit A. Plaintiffs Webb and Nessel seek

¹As the Court will note from the Exhibit attached to Plaintiffs’ Brief, there are a number of ways Elders may be removed based on the constitution and by-laws, which in turn rely heavily on the scriptures, basic church tenets, and other doctrinal matters.

to have the Court reinstate them to the Board of Elders, among other relief. Plaintiffs' Application at ¶s 10-14. With nothing more, the law is clear and unequivocal that "in a church discipline proceeding a church may irregularly, i.e. contrary even to church procedure, discipline or expel a member and still be free of review for correctness by a civil court in this jurisdiction." *Fowler* at 844 P.2d 146.

Plaintiffs further allege that Rev. Rodgers has attempted to use interim appointments to the Board of Elders in order to gain complete and total personal control over the Church Corporation and all of its assets. Plaintiffs' Application at ¶ 6. Introduction of this allegation has the potential of changing what appears to be a purely religious dispute into a church property dispute which is sometimes heard by civil courts. Thus, the pivotal issues now before this Court are whether this is truly a property dispute which might afford the Court subject matter jurisdiction, and if it is, what are the permissible bounds of the Court's inquiry in that regard. *Serbian* addresses both issues.

I. The Dispute Between the Parties Does NOT Involve Church Property.

In *Serbian*, a defrocked bishop (Bishop Dionisiji) sued his church claiming that his defrockment was wrongful and arbitrary under the internal doctrines of the church and seeking a declaration that he should remain in control of diocesan property. Following a lengthy trial, the trial court concluded that there was no substantial evidence of fraud, collusion, or arbitrariness as to the bishop's defrockment. On appeal, the Illinois Supreme Court reversed in part, holding that the church's suspension, removal, and defrockment of the bishop must be set aside as arbitrary because the church proceedings against him had not been conducted in accordance with the court's interpretation of the church's constitution, penal code, and internal regulations. *Serbian* at 49 L. Ed. 2d 161-62. On *certiorari*, the United States Supreme Court reversed for two reasons.

With very little discussion on the church property issue claimed by the bishop, the *Serbian*

court held that:

even though resolution of the dispute over the bishop's defrockment also determined control of church property because the bishop controlled or was the principal officer of the corporations which held church property in the diocese, nevertheless the case essentially involved not a church property dispute, but a religious dispute the resolution of which was for ecclesiastical and not civil tribunals.

Serbian at 49 L. Ed. 2d 152 (emphasis supplied). Like the defrocked bishop in *Serbian*, Plaintiffs Webb and Nessel claim they have been arbitrarily removed from the Board of Elders and as an incidental result of that removal, Pastor Rodgers has "gain[ed] complete and total personal control over the Church Corporation and all of its assets." Plaintiffs' Application at ¶ 6. While this allegation has no basis in fact,² it is true that Plaintiffs Webb and Nessel have lost whatever control they may have previously exerted as individual members of the Board of Elders. But according to *Serbian*, when the dispute is primarily a religious dispute and incidentally involves the control of church property, as it does here, resolution of the dispute is not for the civil courts. *Id.* At 169.

II. There is no Arbitrariness Exception to the Free Exercise Clause of First Amendment Rights.

The United States Supreme Court also reversed in *Serbian* for a second, more fundamental reason and held that:

the actions of the Supreme Court of Illinois contravened the First and Fourteenth Amendments as constituting improper inquiries into matters of ecclesiastical cognizance and polity, and impermissible judicial interference with decisions of the highest authorities of a hierarchical church.

²It is not clear whether Plaintiffs have abandoned this allegation and now have adopted the payments-to-Dimartino as their new property issue. *See, infra* at III.

Serbian at 49 L. Ed. 2d 152. Along with this holding, the Supreme Court provided a brief, historical overview of church property dispute cases and, in addition, set the permissible bounds of a civil court's interference in such matters.

Watson v. Jones, 13 Wall 679, 20 L. Ed. 666 (1872) was one of the early cases involving a church property dispute. *Watson* held:

[T]he rule of action which should govern the civil courts . . . is, that, whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them. [citation omitted]

Serbian at 49 L. Ed. 2d 163. But as a consequence of this holding, *Watson* left the civil courts with no role in determining ecclesiastical questions during the course of resolving church property disputes. Later cases recognized that there might be some circumstances in which a marginal civil court review of ecclesiastical decisions would be appropriate. *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U. S. 440, 21 L. Ed. 2d 658, 664, 89 S. Ct. 601 (1969) [citing *Bouldin v. Alexander*, 1 Wall 131, 21 L. Ed. 69 (1872)]. Speaking for the court in *Gonzalez v. Archbishop*, 280 U.S. 1, 74 L. Ed. 131, 50 S. Ct. 5 (1929), Justice Brandeis defined the bounds for civil court reviews as follows:

In the absence of fraud, collusion, or arbitrariness, the decisions of the proper church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive, because the parties in interest made them so by contract or otherwise.

Gonzalez at 74 L. Ed. 136. Subsequently, the Supreme Court converted the principle in *Watson* as qualified by *Gonzalez* into a constitutional rule in *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 97 L. Ed. 120, 73 S. Ct. 143 (1952). *Presbyterian Church* at 21 L. Ed. 664.

As *Serbian* points out, however, since arbitrariness was not an issue in *Gonzalez*, the “fraud, collusion or arbitrariness” exception to the *Watson* rule was only dictum. *Serbian* at 49 L. Ed. 2d 164. Nonetheless, in reviewing the trial court’s ruling in *Serbian*, the Illinois Supreme Court concluded that the decision of the Mother Church to defrock the bishop was arbitrary. This decision was based upon an in-depth inquiry by the Illinois Supreme Court that persuaded it that the Mother Church had not followed its own laws and procedures. For this reason, and because the United States Supreme Court had never given “concrete content to or applied” the *Gonzalez* exception, it granted *certiorari* to set the bounds of the arbitrariness exception.

The *Serbian* court reasoned:

We have concluded that whether or not there is room for “marginal civil court review” under the narrow rubrics of “fraud” or “collusion” when church tribunals act in bad faith for secular purposes, no “arbitrariness” exception—in the sense of an inquiry whether the decisions of the highest ecclesiastical tribunal of a hierarchical church complied with church laws and regulations—is consistent with the constitutional mandate that civil courts are bound to accept the decisions of the highest judicatories of a religious organization of hierarchical polity on matters of discipline, faith, internal organization, or ecclesiastical rule, custom, or law. For civil courts to analyze whether the ecclesiastical actions of a church judicatory are in that sense “arbitrary” must inherently entail inquiry into the procedures that canon or ecclesiastical law supposedly requires the church adjudicatory to follow, or else into the substantive criteria by which they are supposedly to decide the ecclesiastical question. But this is exactly the inquiry that the First Amendment prohibits; recognition of such an exception would undermine the general rule that religious controversies are not the proper subject of civil court

inquiry, and that a civil court must accept the ecclesiastical decisions of church tribunals as it finds them.

Id. At 165 (emphasis supplied). Like Bishop Dionisiji who claimed he was arbitrarily removed from his post, Plaintiffs here claim they were arbitrarily terminated from the Board of Elders. Plaintiffs' Application at ¶ 3. Because there is no arbitrariness exception to First Amendment rights under *Serbian*, there can be no civil court resolution of what Plaintiffs claim to be their arbitrary removal from the Board of Elders. Consequently, this Court cannot afford any of the relief requested by Plaintiffs³ because it does not have subject matter jurisdiction.

III. Even Assuming There is a Property Dispute Which Would Confer Subject Matter Jurisdiction, this Court is Prohibited from Resolving the Underlying Religious Dispute.

On February 1, 2000, Plaintiffs filed a Brief urging that the Court does indeed have subject matter jurisdiction because now it is a dispute centered on which of two factions is the proper group to control church property. Plaintiffs' Brief at 1. In what appears to be a thinly veiled attempt to further bootstrap a purely internal church dispute into a church property dispute over which this Court might have subject matter jurisdiction, Plaintiffs state the Pastor and his "new Elders" have ignored the lawful action of removing Jesse Dimartino ("Dimartino") as an assistant Pastor and are

³Plaintiffs' first request that Plaintiffs Webb and Nessel be reinstated to the Board of Elders. Plaintiffs' Application at ¶ 10. Conditioned on this happening, Plaintiffs next request an immediate church meeting which includes Webb and Nessel as Elders, ordering Pastor Rodgers to attend such a meeting, that such a meeting be conducted under the Court's supervision, and finally that none of the Elders be summarily dismissed. *Id.* at ¶s 11-14. Since this Court cannot reinstate Webb and Nessel without an impermissible inquiry into matters of discipline, faith, internal organization, or ecclesiastical rule, custom or law as provided by *Serbian*, all of the remaining requests for relief are moot.

continuing to pay Dimartino with church property. Plaintiffs' Brief with attached minutes.⁴ But as noted previously in *Serbian*, when the control of church property is incidental to the underlying religious dispute the resolution of such a dispute is not for the civil courts.

Plaintiffs' entire legal argument is predicated on one line of dictum taken out of context in *Bailey* and with no explanation—" [a] civil court *may* determine the regularity of a church meeting and who is a member of a church for the purpose of determining the identity of those individuals who collectively represent the church and are entitled to control church property." Plaintiffs' Brief at 2-3; *Bailey* at 844 P.2d 146 (original emphasis) [citing *Bouldin v. Alexander*, 82 U.S. (15 Wall) 131, 21 L. Ed. 69 (1872); *First Presbyterian Church in U.S. v. Cumberland Presbyterian Church*, 34 Okla. 503, 126 P. 197, 202 (1912); *Hendryx v. Peoples United Church of Spokane*, 42 Wash. 336, 84 P. 1123 (1906)]. It is undisputed that the State has a legitimate interest in the peaceful resolution of property disputes and in providing a civil forum where the ownership of church property can be conclusively determined. *Jones* at 61 L. Ed. 2d 775. However, the law has substantially changed over the last 100 or so years with respect to the nature and extent of a civil court's inquiry into such a property dispute.

Both *Bouldin* (1872) and *Cumberland* (1912) involved the recovery of title to church real property and were decided long before the United States Supreme Court examined in 1952 what limits the First and Fourteenth Amendments might place upon the ability of the States to hear and

⁴As the Court will note, the "minutes" are a handwritten document which are neither signed by the president and secretary nor is there any evidence of a subsequent approval with respect to its accuracy at a later board meeting. Notwithstanding these defects and assuming the termination was proper, the minutes fail to reflect, among other things, who would convey the termination to Dimartino, what is the effective date of the termination, and what is the appropriate amount of severance pay. Plaintiffs' Brief at the minutes Exhibit, ¶s 1 and 8.

resolve disputes over church property. *Kedroff* at 97 L. Ed. 120. At the turn of the twentieth century there were no First Amendment concerns. Since *Kedroff*, however, it has become clear that:

‘the first Amendment severely circumscribes the role that civil courts may play in resolving church property disputes.’ [*Presbyterian Church* at 21 L. Ed. 2d 665]. Most importantly, the First Amendment prohibits civil courts from resolving church property disputes on the basis of religious doctrine and practice.

Jones at 61 L. Ed. 2d 784 (emphasis supplied) [citing *Serbian* at 49 L. Ed. 2d 151; *Maryland & Va. Churches v. Sharpsburg Church*, 396 U.S. 367, 368, 24 L. Ed. 2d 582, 90 S. Ct. 499 (1970); *Presbyterian Church* at 21 L. Ed. 2d 658]. Moreover, as *Serbian* points out, “[e]ven when rival church factions seek resolution of a church property dispute in the civil courts there is substantial danger that the State will become entangled in essentially religious controversies or intervene on behalf of groups espousing particular doctrinal beliefs.” *Serbian* at 49 L. Ed. 2d 163. Thus, while *Jones* holds that a State is constitutionally entitled to adopt “neutral principles of law”⁵ as one means of adjudicating church property disputes, unlike *Bouldin* in 1872, *Jones* imposes the *Serbian* restriction of not resolving an underlying religious controversy. *Jones* at 61 L. Ed. 2d 784-85. Therefore, even assuming the incidental control of payments to Dimartino does rise to the level of a church property dispute, which of course would be contrary to *Serbian*, this Court still does not

⁵Under the neutral principles of law approach, a civil court can determine ownership of church property by studying deeds, reverter clauses, and general state corporation laws, among others. *Maryland* at 24 L. Ed. 2d 584-85 (*per curiam*, J. Brennan concurring). As pointed out in *Maryland*, a State has an option of several methods of settling church property disputes. No matter what the choice, however, “where the identity of the governing body within a church is a matter of substantial controversy, civil courts are not to make the inquiry into religious law and usage that would be essential to the resolution of the controversy.” *Id.* at 584.

have subject matter jurisdiction to resolve the underlying Elder dispute and restore Plaintiffs Webb and Nessel to the Board of Elders.

IV. Plaintiffs Have No Standing to Bring This Action.

Plaintiffs Webb, Nessel, and Turner bring this action seeking various relief, including reinstatement of Webb and Nessel to the Board of Elders,⁶ and all three Plaintiffs contend there is misuse and/or abuse of church property in that Dimartino is still being paid. Standing to bring an action against one's church must rest on a property interest recognized by secular law and not one predicated on ecclesiastical law. *Bailey* at 844 P.2d 149. For all those reasons set forth herein at parts I, II, and III, and because reinstatement is an interest predicated on ecclesiastical law, Plaintiffs Webb and Nessel have no standing to bring such an action in this Court. In order for Plaintiffs Webb, Nessel, and Turner to assert the misuse of church property (i.e., the use of church operating funds to pay Dimartino), they must have a personal or proprietary interest at stake within the state's civil law. *Id.* at 149-50. Since one's membership status confers no personal or proprietary interest in the assets of his church, Plaintiffs Webb, Nessel, and Turner have no standing to bring an action based on the alleged misuse of church funds.

V. Mandamus is Improper Because There is No Clear Legal Right to Webb and Nessel's Reinstatement.

In order for this Court to issue a Writ of Mandamus, the petitioner must have a clear legal right to the relief sought and the respondent must have a clear legal duty which he refuses to

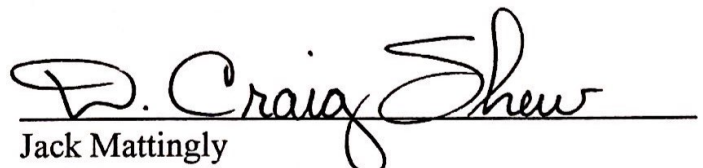
⁶Plaintiff Turner does not have standing to seek the reinstatement of Webb and Nessel because a party must assert his own legal rights and interests and he cannot rest his claim for relief on rights or interests of third parties. *Guardianship of Randall*, 1977 OK CIV APP 30, 569 P.2d 549, 551.

perform. *Southwestern Bell Telephone Co. v. Oklahoma Corporation Comm.*, 1994 OK 38, 873 P.2d 1001, 1007. For the reasons stated herein in parts I, II, and III above, Plaintiffs Webb and Nessel have no clear legal right under Oklahoma law to be reinstated to the Board of Elders nor is there a clear legal duty on the part of any Defendant to reinstate them. Accordingly, mandamus would be improper.

CONCLUSION

Because this honorable Court does not have subject matter jurisdiction and therefore, no jurisdiction over the Defendants, Plaintiffs do not have standing, venue is properly laid in the Evangelistic Temple and not in this Court, and because Plaintiffs have no clear legal right to mandamus, Defendants urge this Court to dismiss Plaintiffs' action with prejudice.

Respectfully submitted,



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Attorneys for the Defendants

IN THE DISTRICT COURT OF PONTOTOC COUNTY
STATE OF OKLAHOMA

Elders Hardy Webb, Ken Nessel & John
Turner, being a majority of the lawful
members of the Board of Elders of Evangelistic
Temple, individually and jointly, on behalf of
the members of Evangelistic Temple, a
non-profit Oklahoma corporation,

Plaintiffs,

VS.

Rev. Jesse Rodgers, and Evangelistic Temple
of Ada, of the State of Oklahoma, a
corporation without capital stock, and
Jim Cauthen, and Gene Davis, claimants as
interim Members of the Board of Elders and
as Directors; and Clyde Leach, Elder and
Board Member,

Defendants.

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FEB 14 2000

WAYNE JOPLIN, Court Clerk
Pontotoc County, Okla.

By [Signature] Deputy

Case No. C-2000-24

**ANSWER TO PLAINTIFFS' APPLICATION
FOR A WRIT OF MANDAMUS**

COME NOW the Defendants herein and enter their special appearance for the purpose of answering Plaintiffs' Application for a Writ of Mandamus, and show the Court as follows:

1. Defendants admit that Defendant church is a non-profit church without capital stock, but otherwise deny the remaining allegations contained in the first paragraph of Plaintiffs' Application.
2. Defendants admit the allegations in the second paragraph of Plaintiffs' Application.
3. Defendants deny the allegations in the third paragraph of Plaintiffs' Application.
4. Defendants admit the allegations in the fourth paragraph of Plaintiffs' Application.
5. Defendants deny the allegations in the fifth paragraph of Plaintiffs' Application.
6. Defendants deny the allegations in the sixth paragraph of Plaintiffs' Application.

A

7. Defendants deny the allegations in the seventh paragraph of Plaintiffs' Application.
8. Defendants deny the allegations in the eighth paragraph of Plaintiffs' Application.
9. Defendants admit the allegations in the ninth paragraph of Plaintiffs' Application.

Affirmative Defenses

10. This Court lacks subject matter jurisdiction to resolve the issues alleged by Plaintiffs. *Serbian Eastern Orthodox Diocese v. Milivojevich*, 46 U.S. 696, 49 L. Ed. 2d 151, 96 S. Ct. 2372 (1976); *Jones v. Wolf*, 443 U.S. 595, 61 L. Ed. 2d 775, 99 S. Ct. 3020 (1979).

11. Without subject matter jurisdiction, this Court lacks personal jurisdiction over the Defendants.

12. Plaintiffs do not have standing to bring this action because they have neither a personal nor a proprietary interest in church property. *Bailey v. Fowler*, 1992 OK 160, 844 P.2d 141.

13. Venue is properly laid in the Evangelistic Temple, not in this Court.

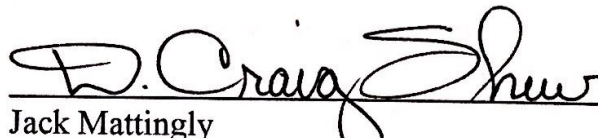
14. Plaintiffs fail to state a claim upon which relief can be granted for the reason Plaintiffs' action violates Defendants' First Amendment rights.

15. Mandamus is improper because under Oklahoma law, Plaintiffs do not have a clear legal right to the relief they seek, nor do Defendants have a plain legal duty which they refuse to perform. *Southwestern Bell Telephone Co. v. Oklahoma Corporation Commission*, 1994 OK 38, 873 P.2d 1001, 1007.

WHEREFORE, having answered Plaintiffs' Application for a Writ of Mandamus, Defendants pray for an order dismissing Plaintiffs' application and for any other relief the Court deems just and reasonable.

Dated this 14th day of February, 2000.

Respectfully submitted,



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IN THE DISTRICT COURT OF PONTOTOC COUNTY

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Elders Hardy Webb, Ken Nessel, & John
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Plaintiffs,

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) Case No. C-2000-24

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WAYNE JOPLIN, Court Clerk
Pontotoc County, Okla.
By James Rousey Deputy

SUPPLEMENTAL BRIEF

Plaintiffs hereby supplement their Brief, previously filed herein, as follows:

Perhaps the leading case on the subject of jurisdiction in a case such as this is *Serbian Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 96 S.Ct. 2372, 49 L.Ed.2d 151 (1976). That case dealt with what is known as a "hierarchical" church, as opposed to a church "congregational" in nature, as is the situation with the case at bar. Notwithstanding that substantial fact difference, the reasoning of the Court in *Serbian* is instructive.

Discussion must begin with an explanation of the difference between "hierarchical" and "congregational" churches. A hierarchical church is one which has an affiliation with a larger body, and is governed, at the least to some degree, by that larger body. The church in the *Serbian* case was affiliated with, and to some degree governed by, the "Mother Church" in Bgrade, Yugoslavia, and its ruling bodies, the Holy Assembly of Bishops and the Holy Synod of Bishops. On the other hand, a "congregational" church is one not so affiliated or governed. It is, essentially, independent. There is no question that Evangelistic Temple is congregational in nature.

The *Serbian* case involved a dispute between the Bishop of what had been large Diocese (essentially a subdivision of the larger Church), the American-Canadian Diocese, and the "Mother Church". The Mother Church had "defrocked" the Bishop, and had divided his Diocese into three, new Dioceses, appointing administrators for these new Dioceses. The Bishop challenged these actions. The holding of the Supreme Court was, in essence, that since the "Mother Church" had made the decisions, and since the "Mother church" was the larger body to which the American-Canadian Diocese had affiliated, the Court should defer to the decisions made by that Mother church, saying:

"The fallacy fatal to the judgment of the Illinois Supreme Court is that it rests upon an impermissible rejection of the decisions of the highest ecclesiastical tribunals of this hierarchical church upon the issues in dispute...". Id at 708.

This is in general accord with the rule with respect to hierarchical churches -- the Courts will not interfere with decisions of a Mother Church as they apply to a subdivision of that church.

A Court's thought process is, necessarily, different as pertains to a congregational church, although it is parallel, since with a congregational church there is no higher ecclesiastical body. As

noted in *Reid v. Gholson*, 327 SE2d 107, 113 (Va. 1985) (copy attached), congregational churches

"...are free to adopt constitutions, by-laws, and internal rules which will alter or regulate their proceedings, but even these must be enacted by majority vote. And in the absence of such voluntarily-adopted rules, each such congregation functions as a pure democracy. When the majority has spoken in a fairly-conducted congregational meeting held after proper notice to the membership, then the governing body of the church has expressed its will and, as in the case of an hierarchical church, its decision is constitutionally immune from judicial review.

The situation is otherwise, however, when the members of a congregational church merely seek the protection of the court for the purpose of obtaining a fairly-conducted meeting in the first place. *Id.*

Application of the above principles to the facts of instant case are obvious. Elements of the instant case are as follows:

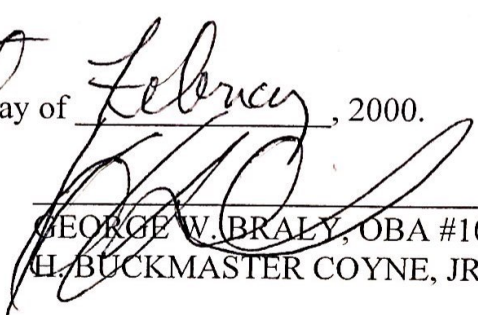
1. There is no ecclesiastical or doctrinal issue in this case.
2. The argument here is over who controls the property of the church.
3. This congregational church has adopted its own rules of governance, in the form of its constitution on by-laws.
4. Here, those voluntary-adopted procedures have clearly not been followed.
5. Here, there has been no meeting of the congregation, to either adopt other by-laws or to vote on the specific issues (removal of the Elders.)
6. Here, there has been no duly constituted meeting and vote of the Elders to take the action of which Plaintiffs complain.

It is clear in this case that we are not dealing with the action of the duly constituted governing body (the Elders) or of a majority of the congregation. What we have, here, is the action of one man, the Pastor, hired by the Elders (albeit, in retrospect, ill-advisedly). He apparently has one ally, new Elder Leach. Clearly, the state of the law on this subject is not that the courts must defer to the ruling of one man, who is afforded no such authority by the by-laws or by the congregation.

Clearly, under the reasoning espoused in *Serbian, supra*, and under the holding in *Reid, supra*, the Court must look to whether or not the independent, congregational Church's ruling body (here, either the Elders or the congregation itself) has taken, or ruled upon, the action of which Plaintiffs complain. In the instant case, neither group has taken any action on this matter.

Plaintiffs respectfully assert that the Court does have jurisdiction to hear and to rule upon this matter.

Respectfully submitted this 14th day of February, 2000.



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IN THE DISTRICT COURT OF PONTOTOC COUNTY
STATE OF OKLAHOMA

Elders Hardy Webb, Ken Nessel, & John
Turner, being a majority of the lawful
members of the Board of Elders of Evangelistic
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a non-profit Oklahoma Corporation,

Plaintiffs,

VS

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a Corporation without capital stock, and
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Board Member;

Defendants.

FILED
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FEB 15 2000

WAYNE JOPLIN, Court Clerk
Pontotoc County, Okla.

By C. Birchfield
Deputy

) Case No. C-2000-24

**PLAINTIFFS' RESPONSE TO BRIEF IN SUPPORT OF
DEFENDANT'S MOTION TO DISMISS**

Plaintiffs, in response to Defendants' Motion, respectfully show the Court:

1. As to Defendants' Recitation of "Facts".

Defendants misconstrue the contentions of Plaintiffs in several respects. First of all, Plaintiffs do not contend that Plaintiffs Webb and Nessel were "arbitrarily" (or otherwise) removed from the Board of Elders. Plaintiffs contend that they have never been removed and continue to be Elders. Defendants also recite that Plaintiffs Webb and Nessel seek reinstatement. That, also, is not the case. They seek determination, in the nature of Declaratory Judgment, they (along with Messers,

Turner, Leach, and Pastor Rodgers, are still the duly constituted and elected Board of Elders.

2. The Serbian case.

Defendants misconstrue the case of *Serbian Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 96 S.Ct. 2372, 49 L.Ed.2d 151 (1976). While their general recitation of the facts and holding are correct, they fail to note that the *Serbian* case dealt with a hierarchical church, while in the instant case the court has before it a congregational church. As noted in Plaintiffs' Supplemental Brief, which discusses the case of *Reid v. Gholson*, 327 SE2d 107, 113 (Va. 1985), the methodology with respect to a congregational church is, necessarily, different, and Plaintiffs refer the court to the *Reid* case and that Supplemental Brief on this issue.

Defendants also overlook substantial language in *Serbian* which supports Plaintiffs' position. That case, quoting from *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 116, says "...that religious freedom encompasses the 'power [of religious bodies] to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.'" *Id* at 721-722. The facts in this case show that no "religious bodies" have taken any action, neither the Board of Elders nor the congregation.¹ That is precisely the complaint of Plaintiffs, and is totally different than the situation presented in *Serbian*, where a religious body (the Mother Church) had taken action.

Defendants quote from *Serbian* (at page 5 of their Brief), from *Watson v. Jones*, 13 Wall 679, 20 L.Ed. 666 (1872) (at page 6) and from *Gonzalez v. Archbishop* 280 U.S. 1, 74 L.Ed. 131, 50 S.Ct. 5 (1929). However, those quotes, while apparently correct statements of the law as applied in those cases, have no application to the instant case. In each of those cases a decision had been

¹Plaintiffs concede that action was taken by Pastor Rodgers. However, Plaintiffs assert that Pastor Rodgers is hardly one of the "Religious bodies" envisioned by *Kedroff* and *Serbian*.

made by the "highest authorities of a hierarchical church" (*Serbian*), or "by the highest these church judicatories" (*Watson*), or by "the proper church tribunals" (*Gonzales*). Again, that is not the situation in the instant case.

3. **The Fowler case.**

Defendants correctly point out that Plaintiffs quote from *Fowler v. Bailey*, 844 P.2d 141 (Okla. 1992). The quote may be dictum in that case, but it appears in the majority opinion in the case, and must be a statement of the majority as to extant law. It should be noted, however, that the "holding" in the case cited by Defendants at page 11 of their Brief comes not from the majority opinion, but from the concurring opinion of Justice Opala, who was joined by no other justice. The determination of one justice, much different than that of all the other justices, carries no precedential value, and is hardly persuasive.

CONCLUSION

The applicants do not ask this Court to "reinstate" anybody.

The applicants do not ask this Court to make reference to any questions of faith or doctrine.

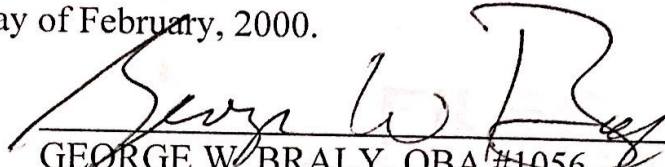
Accordingly, the applicants do not ask this Court to jump into the "religious thicket" identified in *Serbian* and more fully discussed in *Reid v Gholson* (*supra*).

Applicants do ask this Court to declare that the by-laws, read as simply as ordinary corporate by-laws would be read by this Court, require this Court to declare that nothing has changed, and that Hardy Webb, Ken Nettle, and John Turner are still members of the Board of Elders, as they have been for years, and years, and years, and to ensure an immediate and orderly meeting of that board.

This simple request is mandated by the following language in *Reid v Gholson*, which nicely points out the difference between the *Serbian* facts and the present matter:

"But where church property and civil rights disputes can be decided without reference to questions of faith and doctrine, there is no constitutional prohibition against their resolution by the civil courts." *Reid, supra* at 187.

Respectfully submitted this 15th day of February, 2000.


GEORGE W. BRALY, OBA #1056
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Attorneys for Plaintiffs:


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CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of February, 2000, a true and correct copy of the above and foregoing document was mailed, with postage thereon, to:

Jack Mattingly
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D. Craig Shew
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GEORGE W. BRALY
H. BUCKMASTER COYNE, JR.

**IN THE DISTRICT COURT OF PONTOTOC COUNTY
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**Elders Hardy Webb, Ken Nessel, & John
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Defendants.

FILED
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FEB 24 2000

WAYNE J. JENKINS, Clerk
Pontotoc County, Okla.
By W. J. Jenkins
Deputy

) Case No. C-2000-24

MOTION FOR NEW TRIAL

Now come HARDY WEBB, KEN NESSEL, and JOHN TURNER ("Movants") who respectfully move the Court, pursuant to 12 O.S. §651, for a new trial, for the following causes, each of which affects materially the substantial rights of Movants:

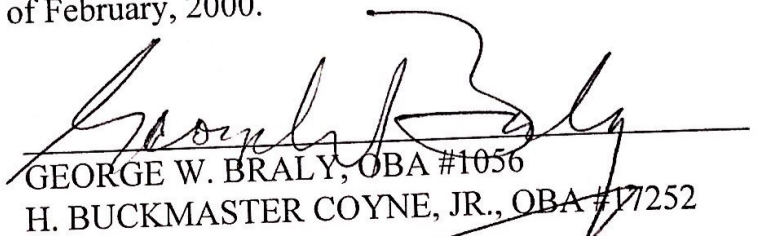
1. "Sixth. That the verdict, report or decision is not sustained by sufficient evidence, or is contrary to laws."
2. "Seventh. Newly discovered evidence, material for the party applying, which he could not, with reasonable diligence, have discovered and produced at trial."
3. "Eighth. Error of law occurring at the trial, and excepted to by the party making the

In support thereof, Movants show the following:

- A. After trial on February 16, 2000, the Court ruled as per the transcript attached hereto as Exhibit A.
- B. As to causes 1 and 3, above, Movants assert that the Court has misapplied the law as it applies to the facts adduced at trial. The facts clearly showed a property dispute, and Movants had standing to bring their action. Movants previously filed their "Brief", "Supplemental Brief" and "Brief in Response", copies of which are attached hereto as Exhibits B, C and D, respectively, and are incorporated by reference.
- C. Since trial of this action a very real dispute as between the parties has arisen over control of certain, specific property of Evangelistic Temple, said property being First United Bank, Account Number 177-810-2. That dispute is evidenced by action, in the nature of interpleader, filed by said First United Bank on February 23, 2000, copy of pleading for which is attached hereto as Exhibit E. This matter clearly could not have been discovered and produced at trial, since it came into existence seven (7) days after trial. Affidavit as to this issue in compliance with 12 O.S. §654, is attached as Exhibit F.

WHEREFORE, for the reasons given Movants respectfully request a new trial.

Respectfully submitted this 24th day of February, 2000.


GEORGE W. BRALY, OBA #1056
H. BUCKMASTER COYNE, JR., OBA #17252

Attorneys for Movants:

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Attorneys and Counselors at Law
A Partnership of Professional Corporations
201 West 14th
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Ada, OK 74821-2739
(580) 436-0871
(580) 436-0889 Facsimile

CERTIFICATE OF SERVICE

I hereby certify that on the 24 day of Feb, 2000, a true and correct copy of the above and foregoing document was mailed, with postage thereon, to:

Mr. Jack Mattingly
Mattingly, Snow & Mattingly
215 E. Oak Street
P.O. Box 70
Seminole, OK 74818

Mr. Craig Shew
Smith, Shew, Scrivner & Corbin
120 E. 14th
P.O. Box 1373
Ada, OK 74820



GEORGE W. BRALY
H. BUCKMASTER COYNE, JR.

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**IN THE DISTRICT COURT OF PONTOTOC COUNTY
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as Directors; and Clyde Leach, Elder and
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Defendants.

) Case No. C-2000-24

BRIEF

Now come Applicants who assert that this Court has jurisdiction over the subject matter of this application and, in support thereof, show the following:

This action deals with a determination as to which of two "factions" is the proper group to control the property of the Evangelistic Temple in Ada, Oklahoma. The facts, as they apply to this issue, are as follows:

FACTUAL SUMMARY

Evangelistic Temple is "congregational" in nature, rather than "hierarchical". It was not

formed by, and has no affiliation with, any larger church entity. No larger church entity has control or jurisdiction over it. The specific By-Laws of the church make it clear that Evangelistic Temple is not, however, governed as a democracy. All governmental authority is posited in the Board of Elders. (See By-Laws, pages 11 and 27, copies attached). Prior to January 12, 2000 (and thereafter, Applicants assert) the Board of Elders consisted of:

Herbert Webb
John Turner
Kenyon Nessel
Clyde Leach
Jesse Rodgers (Pastor)

The By-Laws clearly require that, in order for an Elder to be removed, there must be a vote by the Board of Elders to so remove the Elder. (By-Laws, pages 18-19 and 23, copies attached). Further, the Elder who is the subject of the removal motion may not vote on the motion (By-Laws, page 18, copy attached). Thus, assuming a motion, there would be four (4) votes available, and passage of such motion would require three (3) affirmative votes (a majority). The facts in this case disclose that there was never even a vote to remove any of the Elders. However, on or about January 16, 2000, Pastor Rodgers announced at a church service that Elders Webb and Nessel were no longer Elders, and that they had been replaced by Respondents Cauthen and Davis. Additionally, it is significant that on January 12, 2000, the Board of Elders, by proper vote, took action to relieve one Jesse DeMartino as assistant Pastor. (Copy of Minutes attached) It appears that the Pastor and his "new Elders" have ignored this lawful action and are continuing to pay the Assistant Pastor, such payment being with church property.

ARGUMENT

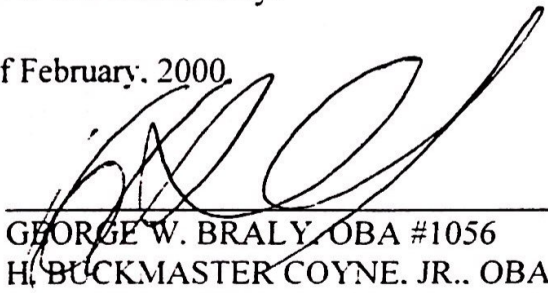
Oklahoma law is clear that "[a] civil court *may* determine the regularity of a church meeting

and who is a member of the church for the purpose of determining the identity of those individuals who collectively represent the church and are entitled to control church property." *Fowler v. Bailey*, 844 P.2d 141, 146 (Okla. 1992) [emphasis in original]. precisely the issue in this case and *Higgins v. Maher*, 210 Cal.App.3d 1168, 1173, wherein that court states that "...[w]here a schism has developed within a church, resulting in dispute as to who holds ultimate authority for congregational or corporate decisions, civil courts are unavoidably put to the task of identifying the true or legitimate authority. [citations omitted] To do otherwise would be to deny all legal protection to churches and [allow] church disputes to be settled by physical force."

CONCLUSION

This is not an ecclesiastical matter. It is a matter which, if not resolved by the courts, could well result in the physical force referred to in *Higgins, supra*. For the reasons stated, Applicants assert that the Court does have jurisdiction over this controversy.

Respectfully submitted this 1st day of February, 2000.



GEORGE W. BRALY, OBA #1056
H. BUCKMASTER COYNE, JR., OBA #17252

OF COUNSEL:
BRALY & BRALY and COYNE
Attorneys and Counselors at Law
A Partnership of Professional Corporations
201 West 14th
P.O. Box 2739
Ada, OK 74821-2739
(580) 436-0871
(580) 436-0889 Facsimile

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of February, 2000, a true and correct copy of the above and foregoing document was mailed, with postage thereon, to:

D. Craig Shew
Smith, Shew, Scrivner & Corbin, P.C.
P.O. Box 1373
120 E. 14th Street
Ada, OK 74821-1373


H. BUCKMASTER COYNE, JR.

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EVANGELISTIC TEMPLE
P. O. BOX 99
ADA, OKLAHOMA 74821
405 327-0044

JOHN W. KIRBY, JR., PASTOR

IN THE DISTRICT COURT OF PONTOTOC COUNTY

STATE OF OKLAHOMA

Elders Hardy Webb, Ken Nessel & John
Turner, being a majority of the lawful
members of the Board of Elders of Evangelistic
Temple, individually and jointly, on behalf of
the members of Evangelistic Temple, a
non-profit Oklahoma corporation,

Plaintiffs,

VS.

Rev. Jesse Rodgers, and Evangelistic Temple
of Ada, of the State of Oklahoma, a
corporation without capital stock, and
Jim Cauthen, and Gene Davis, claimants as
interim Members of the Board of Elders and
as Directors; and Clyde Leach, Elder and
Board Member,

Defendants.

FILED
Book 70 Page 142
MAR 1 2000
JANIS ROWSEY Court Clerk
Pontotoc County, Oklahoma
By [Signature] Deputy

Case No. C-2000-24

**MOTION TO CLARIFY THE COURT'S PRELIMINARY RULING
AND TO SPECIALLY SET AN EXPEDITED HEARING**

COME NOW the Defendants, Rev. Jesse Rodgers, and Evangelistic Temple of Ada, of the State of Oklahoma, a corporation without capital stock, and Jim Cauthen, and Gene Davis, claimants as interim Members of the Board of Elders and as Directors; and Clyde Leach, Elder and Board Member,, and move the Court for clarification of its ruling in the above-captioned matter and to specially set this matter for an expedited hearing. In support thereof, Defendants show the Court as follows:

1. Plaintiffs initiated this lawsuit alleging in part that Plaintiffs Webb and Nessel were improperly removed from the Board of Elders of Defendant, the Evangelistic Temple of Ada, and

X

sought, in part, "the restoration of the proper and pre-existing control over the church funds and bank accounts." Plaintiffs' Petition at ¶ 11.

2. The relief of "restoration of the proper and pre-existing control over the church funds and bank accounts," was prompted by a corporate resolution passed unanimously (including Plaintiff Turner) by the Board of Elders on January 18, 2000, whereby the signatories on the church's four accounts at First National Bank and Trust Co. of Ada were changed to reflect that two of the following three officers, Jesse L. Rodgers, Jim Cauthen [sic John Turner — as corrected at a later Board meeting] and Clyde Leach, be required to transact church business. *See Exhibit A.*

3. This matter came on for hearing on the merits on February 16, 2000.

4. In pertinent part, the Court announced its preliminary ruling that:

[a]nd with that it's going to be my finding that the plaintiffs were either forfeited or relieved of their duties in violation of Section 6 of the bylaws of the Evangelistic Temple. And that they were forfeited or dismissed not in accordance with those bylaws.

But it's also going to be my decision that the law requires me to find some type of property interest for them to have standing to bring this lawsuit and to invoke the jurisdiction of the State of Oklahoma into an ecclesiastical matter. It will be my further decision that they do not have standing and that the case should be dismissed.

5. Both Plaintiffs and Defendants have submitted proposed Journal Entries of Judgment, but as of this date the Court has not finalized its ruling.

6. On February 29, 2000, Plaintiffs Webb, Nessel, and Turner, and a non-party, Sandy Bates, gave notice to First National Bank and Trust Co. of Ada ("First National") that:

[t]he District Court in Pontotoc County, Oklahoma has now ruled that, in fact, Messers Webb and Nessel were not removed as Elders or Directors in accordance with the applicable Constitution and Bylaws. (Copy of Transcript of the Judges ruling is attached). As a result of that ruling, Messers Webb and Nessel continue to be two of the five Elders and Directors.

Exhibit B at ¶ 4. Further, the subject notice stated that "[t]he duly elected or appointed Elders and Directors, and authorized bank account signatories, remain as detailed in paragraphs 1, and 2, above." Based on these statements, and others, the undersigned to the notice demanded:

[t]hat the Bank not honor any banking transactions with the above referenced bank accounts unless the transactions are performed by and/or bear the signatures of the duly appointed banking signatories specified in paragraph 2, [i.e. Nessel and Bates] above, and no others.

7. As a consequence of said notice, First National has frozen account numbers 377252 and 4261623 owned by the Evangelistic Temple, and based on a personal communication from Denver Davison, First National is preparing an Interpleader/Declaratory Judgment Action to determine who are the proper parties to control the church's bank accounts. It is believed the two accounts contain approximately \$24,000.

8. Plaintiffs initiated a similar notice to First United Bank in Ada that, in turn, caused an account owned by the Evangelistic Temple (Evangelistic Temple Youth Account, No. 177-810-2) to also be frozen. *See*, SC-2000-242, Pontotoc County. As a consequence of Plaintiffs' actions, the Evangelistic Temple is totally without operating funds to meet its payroll and pay its routine monthly bills.

9. At the hearing on the merits, control of the church's funds and bank accounts was one of the issues raised by Plaintiffs and the Court ruled that there must be some type of property interest for Plaintiffs to have standing and to invoke subject matter jurisdiction with respect to that property interest in a ecclesiastical matter. Apparently, the Court found that incidental control of church funds is not a sufficient property interest because the Court ruled Plaintiffs do not have standing and dismissed the case. Despite the Court's ruling, Plaintiffs persist in asserting control over the church's funds and bank accounts to the detriment of the church, its employees and creditors.

10. Plaintiffs rely on the Court's words to the effect that Plaintiffs Webb and Nessel were removed from their post as Elders "not in accordance with those bylaws. It is not clear how the Court made such a finding—in effect, ruling on a ecclesiastical matter—when Plaintiffs had no standing in the first instance, nor did Plaintiffs raise a sufficient property interest—i.e. control of church funds—to invoke the Court's jurisdiction. Irrespective of whether the Court relied on either no standing or lack of subject matter jurisdiction, the Court's finding would appear to be merely dictum. As a result of this Court's finding, Plaintiffs have focused on this dictum and convinced First National and First United to freeze all of the bank accounts of the Evangelistic Temple.

11. An emergency exists in that the church is without operating funds and is therefore unable to meet its end-of-the-month payroll or other necessary operating expenses. Accordingly, Defendants request an expedited hearing to clarify the issue of whether the Court's finding of the Webb and Nessel's removal not in accordance with the bylaws is an appropriate finding in view of their lack of standing.

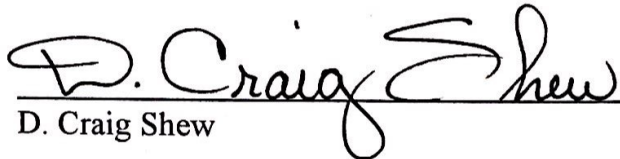
WHEREFORE, Defendants pray for an order of the Court setting an expedited hearing to clarify the issues set forth herein.

Dated this 1st day of March, 2000.

JACK MATTINGLY
MATTINGLY, SNOW & MATTINGLY, P.C.
P. O. Box 70
Seminole, OK 748180070
(405) 382-3333; Fax: (405) 382-6303

D. CRAIG SHEW, OBA #10608
SMITH, SHEW, SCRIVNER & CORBIN, P.C.
Post Office Box 1373
Ada, OK 74820
(580) 332-9033; Fax: (580) 332-9291

By:

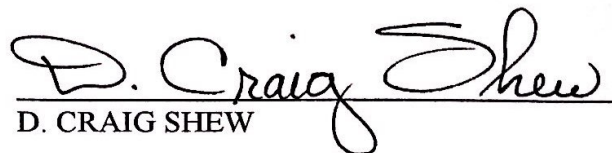

D. Craig Shew

Attorneys for the Defendants

CERTIFICATE OF SERVICE

I certify that on the 1st day of March, 2000, I hand delivered a true and correct copy of the foregoing instrument to the following person at the address indicated:

George W. Braly
Braly & Braly and Coyne
P. O. Box 2739
Ada, OK 74820


D. CRAIG SHEW

IN THE DISTRICT COURT OF PONTOTOC COUNTY

STATE OF OKLAHOMA

Elders Hardy Webb, Ken Nessel, & John
Turner, being a majority of the lawful
members of the Board of Elders of
Evangelistic Temple, individually and
jointly, on behalf of the members of
Evangelistic Temple, a non-profit
Oklahoma Corporation,

Plaintiffs,

vs. No. C-2000-24

Rev. Jesse Rodgers, and Evangelistic
Temple of Ada, of the State of Oklahoma,
a Corporation without capital stock, and
Jim Cauthen, and Gene Davis, claimants as
interim Members of the Board of Elders
and as Directors; and Clyde Leach, Elder
and Board Member,

Defendants.

FILED
Book 70 Page 142
MAR 10 2000
JANIS ROWSEY, Court Clerk
Pontotoc County, Oklahoma
By [Signature] Deputy

DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION FOR NEW TRIAL

COME NOW the Defendants and enter their special appearance for responding to Plaintiffs' Motion For New Trial, and show the Court as follows:

Plaintiffs' first allege the Court has misapplied the law as it applied to the facts of trial, and, with nothing more, conclude "[t]he facts clearly showed a property dispute, and Movants had standing to bring their action." Plaintiffs neither set forth which facts support their conclusion nor do they provide any specific argument other than their previous briefs. Accordingly, Defendants refer the Court to their Brief in Support of Motion to Dismiss and incorporate said brief herein.

A

Next Plaintiffs claim there is new evidence in the form of a subsequent interpleader action

by First United Bank with respect to Evangelistic Temple's Youth Account No. 177-810-2. Plaintiffs had knowledge and documents related to this account at the time of trial through a subpoena duces tecum served on Defendant Clyde Leach. Despite this timely knowledge, Plaintiffs later created this new evidence "by contacting First United and asserting control over the funds, which in turn caused First United to Interplead. Thus, Plaintiffs created the "new evidence" on which they now rely.

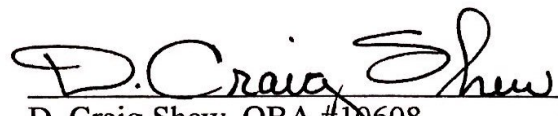
Whether control of the First United account is a property issue, subject to this Court's subject matter jurisdiction, is an issue on which the Court requested briefs from the parties due on March 23, 2000. Defendants intend to fully brief this issue at that time, and therefore, Defendants would direct the Court's attention to their brief which will be responsive to this issue.

DATED this 10th day of March, 2000.

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D. CRAIG SHEW, OBA# 10608
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P. O. Box 1373
Ada, OK 74821-1373
(580)332-9033 Fax: (580)332-9291

By:


D. Craig Shew, OBA #10608
Attorneys for Defendants

**Elders Hardy Webb, Ken Nessel, & John
Turner, being a majority of the lawful
members of the Board of Elders of Evangelistic
Temple, individually and jointly, on behalf of
the members of Evangelistic Temple,
a non-profit Oklahoma Corporation,**

Plaintiffs,

VS

**Rev. Jesse Rodgers, and
Evangelistic Temple
of Ada, of the State of Oklahoma,
a Corporation without capital stock, and
Jim Cauthen, and Gene Davis, claimants as
interim Members of the Board of Elders and
as Directors; and Clyde Leach, Elder and
Board Member;**

Defendants.

FILED
Book 70 Page 142

MAR 23 2000

JAMIS ROWSEY, Court Clerk
Pontotoc County, Oklahoma
By Debbie Cauthen
Deputy

) Case No. C-2000-24

BRIEF

Now come Plaintiffs who, pursuant to direction of the Court, submit this Brief with respect to specific, designated questions posed by the Court.

1. Is the property issue raised by the two "interpleader" actions filed by the church's banks merely incidental to ecclesiastical considerations?

Plaintiffs' initial position in this regard is that there are no ecclesiastical issues involved in this case at all. The matters presented by Plaintiffs for the Court's determination did not and do not involve any theological or doctrinal matters. All of the parties (Plaintiffs and Defendants)

have voluntarily, by agreement, submitted themselves to a set of rules (the By-Laws) by which the "business" of the church, including control of church property, is to be handled. Those rules require that such "business" and property matters be handled by the Board of Elders (also the Board of Directors of the church corporation). Those rules also detail the proper, agreed methods for installation and removal of Elders/Directors from the Board. Those agreed methods were, obviously, not followed in the purported removal of Elders/Directors Webb and Nessel. There is nothing ecclesiastical, theological or doctrinal about the foregoing. Additionally, these facts bring this corporation within the terms of 18 O.S. §§1070 and 1072, which give the Courts authority to do those things requested by Plaintiffs.

As has been discussed in previously submitted briefs, there are no cases in Oklahoma which address the fact situation before the Court. However, at least one Oklahoma case has indicated that, where there is a property dispute, the Court has jurisdiction to decide it. *Fowler v. Bailey* 844 P.2d 141 (Okla. 1992). That case further indicates that a court may determine who is entitled to control church property in such a property dispute.

The Court has requested guidance as to whether or not there is a true property dispute in this case. The answer must, clearly, be "Yes". In this case we have the following:

- A. Monies belonging to the "church" deposited in two different accounts, in two different banking institutions. These monies are clearly "property".
- B. Competing claims, as between two factions, as to who has the right to access and control that property. This is clearly, a "dispute".
- C. The two banking institutions requesting determination by the court as to which of the two factions the banking institutions should listen to regarding access to and control of the

property.¹

The case of *Jones v. Wolf*, 443 US 595 (1979) is instructive. In that case, as here, there was an apparent schism in the church. The question before the Court was which of the two factions had the right to control the general church property. The U.S. Supreme Court clearly recognized the authority of the Courts to make this decision.² In the instant case, we not only have a question as to who is to control the general church property, we have the further, specific, question as to who lawfully controls these two bank accounts. To the extent that control of general church property may have previously been incidental to "ecclesiastical" matters, the action of the two banks has clearly made control of those two properties of the church non-incidental.

The Court should also note that Plaintiffs Nessel and Webb are members of the Board of Directors and are officers of the corporation. As such, they have a fiduciary duty to the corporation and to its members. This is particularly true as to Mr. Nessel, who is (Plaintiffs assert) the treasurer of the corporation. He is, therefore, potentially liable if he does not exercise proper control over the funds of the corporation. In this respect, Mr. Nessel may even be the "Hohfeldian" litigant discussed by Justice Opala in his concurring opinion in *Fowler v. Bailey*, *supra*.

2. May the Court appoint a receiver?

It is conceivable, under the facts of this case, that the Court could appoint a receiver or

¹This is an element not present in any of the cases we have found. In no other case is there a third party requesting determination regarding church property control. Obviously, these banks are subject to liability if they allow the wrong faction to access and control the property. Obviously, also, these banks are entitled to judicial resolution of their dilemma.

²It should be noted, however, that the church in *Jones v. Wolf* was hierarchical, a part of the Presbyterian Church, U.S. (PCUS). The case was remanded for determination as to whether or not any action by the PCUS in choosing a faction had foreclosed the civil courts from acting.

custodian under 18 O.S. §1071, perhaps under subsection A of that statute. However, it is unclear what that custodian or receiver would do. It is unlikely that the current fact situation would justify liquidation under subsection B. Therefore, the "custodian" would have authority "to continue the business of the corporation". Query how a custodian could do this in view of the nature of this corporation's "business".

3. May the Court order liquidation of corporate (church) assets and distribution of proceeds to the members.

The last portion of the query, distribution of proceeds to members, is clearly not authorized. The corporation is a religious one, qualified under §501(c) of the Internal Revenue Code. As such, it necessarily has, as part of its constituent documents (in this case, its By-Laws), a prohibition against distribution except to a like (qualified under §501(c)) organization. As to liquidation by the Court, Plaintiffs are unable to locate authority in Oklahoma statutes for Court ordered liquidation under the present facts.

4. If the By-Laws were determined to be ambiguous, does the court have authority to look to "majority rule" to resolve the current impasse?

Initially, Plaintiffs point out that, as to the issue in question, removal of a director/elder, the Bylaws are clearly not ambiguous. Further, the Bylaws clearly state that the Directors/Elders, as opposed to a majority of the congregation, are to govern the corporate affairs. Notwithstanding this position, Plaintiffs would agree to submit the current dispute, which persons constitute the legal board of Elders/Directors, to a vote of the majority of the congregation, and would agree to abide by the outcome of such vote. They would then propose that the Board so designated should continue governance of the corporation in accordance with the Bylaws.

Respectfully submitted this 23rd day of March, 2000.



GEORGE W. BRALY, OBA #1056
H. BUCKMASTER COYNE, JR., OBA #17252

Attorneys for Plaintiffs:

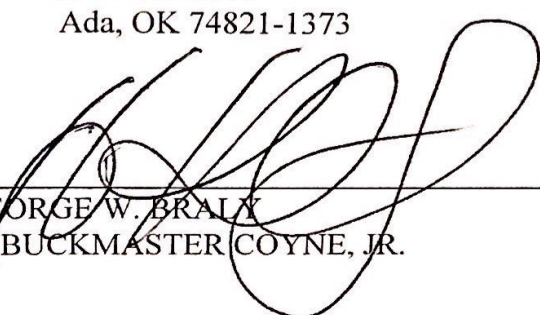
BRALY & BRALY and COYNE
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201 West 14th
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(580) 436-0871
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CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of March, 2000, a true and correct copy of the above and foregoing document was mailed, with postage thereon, to:

Jack Mattingly
Mattingly, Snow & Mattingly, P.C.
P.O. Box 70
Seminole, OK 74818-0070

D. Craig Shew
Smith, Shew, Scrivner & Corbin, P.C.
120 East 14th Street
P.O. Box 1373
Ada, OK 74821-1373



GEORGE W. BRALY
H. BUCKMASTER COYNE, JR.

FAWP\EVANTEMP\WEBB\BETAL\B_BRIEF.322

IN THE DISTRICT COURT OF PONTOTOC COUNTY

STATE OF OKLAHOMA

Elders Hardy Webb, Ken Nessel & John)
Turner, being a majority of the lawful)
members of the Board of Elders of Evangelistic)
Temple, individually and jointly, on behalf of)
the members of Evangelistic Temple, a)
non-profit Oklahoma corporation,)
Plaintiffs,)

VS.)

Rev. Jesse Rodgers, and Evangelistic Temple)
of Ada, of the State of Oklahoma, a)
corporation without capital stock, and)
Jim Cauthen, and Gene Davis, claimants as)
interim Members of the Board of Elders and)
as Directors; and Clyde Leach, Elder and)
Board Member,)
Defendants.)

Case No. C-2000-24

FILED
Book 70 Page 142
MAR 23 2000
JANIS ROWSEY, Court Clerk
Pontotoc County, Oklahoma
By C. Brown
Deputy

DEFENDANTS' RESPONSE TO QUESTIONS PRESENTED BY THE COURT

COME NOW the Defendants, **Rev. Jesse Rodgers, and Evangelistic Temple of Ada, of the State of Oklahoma, a corporation without capital stock, and Jim Cauthen, and Gene Davis, claimants as interim Members of the Board of Elders and as Directors, and Clyde Leach, Elder and Board Member**, and enter their special appearance to respond as follows to four questions presented by the Court:

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Book 70 Page 142

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Deputy

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FACTUAL BACKGROUND

On January 18, 2000, a meeting of the Board of Elders of The Evangelistic Temple of Ada ("the Board") was held in which the Board unanimously¹ adopted corporate resolutions relative to the church's bank accounts at First National Bank and Trust Co. of Ada ("First National"). Exhibit A. The essence of these resolutions was to change First National's signature cards to reflect that signatures of two of the following three officers—Jesse L. Rodgers, Jim Cauthen (sic, John Turner, as later corrected) and Clyde Leach—were required to transact church business. Exhibits B1-B4. A copy of the minutes of the meeting and the resolutions were presented to First National which, in turn, accepted the documents and allowed the church to transact its business under the newly adopted resolutions. Exhibit C.

At the time the church presented its corporate resolutions, First National had in its possession an Affidavit from Plaintiff, Kenyon Nessel, asserting he was Secretary/Treasurer and had not been removed by two-thirds vote of the Elders. Exhibit D. On January 19, 2000, Plaintiffs' attorney sent a letter to First National contending, among other things, Plaintiffs were not removed in compliance with the church bylaws and thus, the replacement Elders had no authority to act on the corporate resolutions. Exhibit E. In spite of Nessel's Affidavit and Plaintiffs' attorney's letter, First National continued to allow the church to transact its financial affairs according to the subject resolutions. Since First National had the minutes which reflected a majority of either the old or new Elders², along with proper corporate resolutions and signed signature cards, and even despite Turner's request

¹Present were Elders Rodgers, Leach, Cauthen, Davis, and by telephone, Turner.

²Rodgers, Leach, and Turner make up a majority of either the old or new Board of Elders.

for his voluntary removal as a signatory on the church's accounts, Exhibit F, First National continued to honor the new corporate resolutions.

On January 21, 2000, Plaintiffs filed their Applications for the Court to determine the right of Plaintiffs and Defendants to hold office as Elders and to issue a Writ of Mandamus to Rodgers. The essence of Plaintiffs' Application is that "Rev. Jesese Rodgers has abrogated unto himself the power to arbitrarily remove two of the five members of the board of the church,"³ and sought reinstatement of Webb and Nessel to the Board as well as "the restoration of the proper and pre-existing control over the church funds and bank accounts."⁴ Applications at ¶s 4 and 11 (emphasis supplied). Apparently, Plaintiffs' Applications were prompted because Plaintiffs' earlier efforts failed to cause First National to freeze the church's bank accounts.

After hearing the evidence, the Court ruled from the bench that Webb and Nessel were removed not in accordance with the bylaws⁵ and:

But it's also going to be my decision that the law requires me to find some type of property interest for them to have standing to bring this lawsuit and to invoke the jurisdiction of the State of Oklahoma into an ecclesiastical matter. It will be my further decision that they do not have standing and that the case should be dismissed.

Transcript of Court's Ruling. On February 29, 2000, Plaintiffs Webb, Nessel, Turner, and a non-party here, Sandy Bates, gave notice to First National that:

³Curiously, Plaintiffs later disavowed their original allegation and claimed they "do not contend that Plaintiffs Webb and Nessel were arbitrarily (or otherwise) removed from the Board of Elders. Plaintiffs' Response Brief in Support of Defendants' Motion to Dismiss at 1.

⁴Plaintiffs later pointed out a specific example of the control of church funds—the payment of Dimartino's salary. Plaintiffs' Brief at 2.

⁵This part of the Court's ruling is, of course, void on its face. See, below.

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[t]hat the Bank not honor any banking transactions with the above referenced bank accounts unless the transactions are performed by and/or bear the signatures of the duly appointed banking signatories specified in paragraph 2, [i.e. Nessel and Bates] above, and no others.

Id. Based on this demand, First National has frozen account numbers 377252 and 4261623 which are owned by the Evangelistic Temple and collectively contain about \$24,000.00.

In addition, First National has filed an Interpleader action, C-2000-95, Pontotoc County, urging the Court to resolve the conflicting claims over control of the two accounts. As part of their response to the First National Interpleader, Defendants and cross claimants in that case, Webb, Nessel, Turner, and Bates, asserted a cross claim against Defendants, Rodgers, Leach, Cauthen, and Davis, that contained allegations virtually identical to the allegations contained in Plaintiffs’ original Applications. Cross Claim in C-2000-95, filed March 8, 2000. As before, cross claimants contend Webb and Nessel were arbitrarily removed from the Board and sought their reinstatement to the Board and “restoration of the proper and pre-existing control over the church funds and bank accounts.” *Id.* At Relief Requested, ¶s 1 and 2 (emphasis added).

Similarly, First United Bank and Trust Company (“First United”) interpled \$1,229.91 from the Evangelistic Temple Youth Account in Case No. SC-2000-242 on February 23, 2000. However,

First United's Interpleader has no details with respect to what prompted its action. But again, Defendants, Webb, Nessel, Turner, and Bates, filed a cross claim on March 10, 2000, that is virtually identical to both its cross claim in the First National Interpleader and their original allegations in this case—that is, reinstatement of Webb and Nessel and restoration of control of church funds.

ARGUMENT AND AUTHORITIES

1. **Is the property issue [in the interpleader actions] incidental to the ecclesiastical issue?**

First Amendment, church/state cases generally fall into one of three categories. At one end of the spectrum are the purely religious disputes. With respect to that category, the law is clear and unequivocal: “[c]ivil courts will not review acts of religious organizations relating solely to internal ecclesiastical affairs for the sole purpose of ascertaining whether they are in accord with policy, discipline, or usages of the organization.” *Fowler v. Bailey*, 1992 OK 160, 844 P.2d 141, 144. At the other end of the spectrum are the cases which involve pure property disputes. *See, e.g. Reid v. Gholson*, 229 Va. 179, 327 S.E.2d 107 (a copy of which is attached to Plaintiffs’ Supplemental Brief); *Jones v. Wolf*, 443 U.S. 595, 61 L. Ed. 2d 775, 99 S. Ct. 3020 (1979) (the state has a legitimate interest in the peaceful resolution of property disputes and in providing a civil forum where the ownership of church property can be conclusively determined). *Reid* involved an independent, congregational church which had no bylaws or constitution and had been traditionally governed by majority vote. *Reid* at 229 Va. 181. In *Reid*, neither party contended there was a doctrinal dispute or the slightest disagreement on matters involving religious beliefs. *Id.* At 188. Consequently, the *Reid* court affirmed the trial court’s applying a neutral-principles-of-law approach to remedy the property dispute.

The third category of cases involves a hybrid of the two extremes, a case involving both a religious dispute and a property dispute. As pointed out before, while a court may be able to address the property aspect, it still does not have subject matter jurisdiction to resolve the religious dispute. Defendants' Brief at III. A variation in this category involves a religious dispute and control, rather than ownership, of church property. *Id.* at I. *Serbian Eastern Orthodox Diocese v. Milivogevich*, 46 U.S. 696, 96 S. Ct. 2372, 49 L. Ed. 2d 151 (1976) addressed this very issue and held that when the dispute is primarily a religious dispute and incidentally involves the control of church property, resolution of the dispute is not for the civil courts. Presumably, this Court applied *Serbian* and found that the incidental control of church funds by Plaintiffs was an insufficient basis on which to assume jurisdiction.

Plaintiffs have been consistent from the beginning in alleging the property aspect of their claims involve control, not ownership, of the church bank accounts, and that this issue can be resolved by reinstating Webb and Nessel to the Board of Elders. This position is readily apparent from (1) counsel's January 19, 2000, letter to First National, (2) the allegations contained in Plaintiffs' Applications filed on January 21, 2000, (3) the Court's ruling on February 16, 2000, (4) Plaintiffs' subsequent demand on First National dated February 29, 2000,⁶ (5) Plaintiffs' cross claim

⁶In their demand of February 29 to First National, Plaintiffs relied on the Court's preliminary ruling to the effect that Webb and Nessel were removed not in accordance with the bylaws. This, coupled with Plaintiffs' spurious logic that "Webb and Nessel [therefore] continue to be two of the five Elders and Directors," was one of the factors which caused First National to interplead. This, G at ¶ 4. By stating that Webb and Nessel were improperly removed and later dismissing the case because Plaintiffs did not have standing caused at least this part of the ruling to be void on its face. Effectively, the Court ruled on the very issue that the Plaintiffs did not have standing to bring. Thus, had the Court's ruling been in judgment form, it would have lacked one of the three indispensable elements of jurisdiction—the power to render a particular judgment—necessary to render a valid judgment. *B & C Investments, Inc. v. F & M National Bank & Trust*, 1995 OK CIV APP 106, 903

filed (as Defendants) in the First National Interpleader, and (6) Plaintiffs' cross claim filed (as Defendants) in the First United Interpleader. In each instance Plaintiffs, or cross claimants in the Interpleader actions, are seeking reinstatement of Webb and Nessel to the Board of Elders and restoration of control of the church funds and bank accounts. But these issues have already been tried to the Court and were found not to be a sufficient property interest to invoke the jurisdiction of the Court. Nonetheless, Plaintiffs persist by causing the banks to freeze the church's bank accounts based on precisely the same issues which were tried and ruled on initially. Since the parties had a full and fair opportunity to litigate the issues of the reinstatement of Webb and Nessel and to restore control of the church bank accounts, any subsequent trial of the same issues would be barred by *res judicata* and/or collateral estoppel. *Dorchester Hugoton, Ltd. v. Dorchester Master Limited Partnership*, 1996 OK CIV APP 59, 925 P.2d 1213, 1221 (reh'g denied, *cert* denied). Thus, the answer to the Court's question of whether the property issue involved in the interpleader actions is incidental to the underlying ecclesiastical issue is clearly yes not only because of *Serbian*, but also because that precise issue has already been decided by this Court.

2. If there is truly a property issue, does the Court have the power to appoint a receiver under Title 18?

Defendants' short answer to the Court's hypothetical question which assumes a property dispute, is arguably yes. There are a number of statutes which provide for the appointment of a receiver, including 18 Okla. Stat. §§ 1072 and 1106 and 15 Okla. Stat. § 1551. Given the right set of facts and circumstances, the Court could likely find a basis for such a statutory appointment, or even proceed on its own motion. *Sullins v. Sullins*, 1955 OK 17, 280 P.2d 1009, 1012 (*reh'g denied*

P.2d 339, 341.

March 15, 1955). However, such an appointment would accomplish little more than payment of the most basic, undisputed necessities, like the property insurance, for example. Most other payments—like payment of Dimartino's salary, for example—would likely be disputed and thus entangle the receiver and Court in a thicket of religious issues which are clearly beyond the Court's subject matter jurisdiction.

3. **If a receiver were appointed, would the receiver have the power to liquidate the church's assets and divide the proceeds among its members (or to donate the proceeds to an organization as set forth in Article XI of the church's bylaws)?**

This hypothetical question is based on the assumptions that (1) there is an actual property dispute and (2) there is authority for appointment of a receiver. Should such a liquidation be ordered, irrespective of whether the proceeds go to the members or to a qualified organization, the Court would have so far exceeded the state's legitimate interest in property issues so as to render first amendment rights meaningless. Clearly, there is no authority for such a forced liquidation.

4. **If the Court were to find the church's bylaws ambiguous, could the Court appoint a commissioner to hold a congregational meeting and impose majority rules?**

Should the Court attempt to interpret and thus disregard the church's existing bylaws, it would be making the same fatal error that the Illinois Supreme Court made in *Serbian*. As before, this would be an impermissible intrusion into religious matters.

CONCLUSION

Based on the foregoing, Defendants urge the Court to find, order, and grant the following relief in its final order:

1. that the Court validate its initial ruling by removing the sentences related to whether or not Webb and Nessel were properly or improperly removed from the Board of Elders; *B & C Investments, Inc.* at 903 P.2d 339;

2. that the Court finds that Plaintiffs' claims involve primarily a religious dispute with the control of church funds and bank accounts being only incidental to the underlying religious dispute; *Serbian* at 49 L. Ed. 2d 151 (1976);

3. that since the Free Exercise clause of the First Amendment of the United States Constitution prohibits courts from inquiring into any phase of ecclesiastical decision-making—its merits as well as procedure—this Court does not have subject matter jurisdiction to afford any of the relief requested by Plaintiffs, including the declaration that Plaintiffs Webb and Nessel are lawful members of the Board of Elders of the Evangelistic Temple of Ada or that they are the proper parties to exert control over the church's funds or bank accounts; *Hadnot v. Shaw*, 1992 OK 21, 826 P.2d 978, 988;

4. that since Plaintiffs have failed to demonstrate any personal or proprietary interest in the assets of the Evangelistic Temple of Ada, they have no standing to bring this action; *Fowler* at 844 P.2d 141;

5. that Plaintiffs' Applications in C-2000-24 should be dismissed;

6. that since Plaintiffs' cross claims as Defendants in C-2000-95 (First National) and SC-2000-242 (First United) are identical to their claims in C-2000-24, (1) said claims involve primarily a religious dispute and are only incidental to the control of church property, (2) this Court does not have subject matter jurisdiction to afford any of the relief requested by cross claimants, (3) cross claimants have no standing to assert their cross claims because they have not alleged any personal

or proprietary interest in church property, and (4) said cross claims are barred by *res judicata* and/or collateral estoppel, and therefore, the claims of cross claimants in the Interpleader actions should be dismissed;

7. that the Interpleader actions of First National and First United involve primarily a religious dispute with only incidental control of church property, and therefore, this Court does not have subject matter jurisdiction to settle the issues raised by the Interpleader actions;

8. that since the parties have had a full and fair opportunity to previously litigate the issues raised by the Interpleader actions, they are barred by *res judicata* and/or collateral estoppel;

9. that the Interpleader actions of First National, C-2000-95, and First United, SC-2000-242, should be dismissed;

10. that since the Evangelistic Temple of Ada is the undisputed owner of the funds which are the subject of the Interpleader actions, the Court should direct First National to unfreeze the accounts of the Evangelistic Temple of Ada and to permit the church to use its accounts unencumbered by the mere allegations of Webb, Nessel, and Turner, and to direct the Court Clerk of Pontotoc County to turn over the \$1,229.91 from Account No. 177-810-2 to its owner, the Evangelistic Temple of Ada, and should poundage be necessary, to direct First United to pay said poundage;

11. that the Motion for a new trial in C-2000-24 should be denied because the "new evidence" alleged by Plaintiffs and now evidenced by their cross claim in SC-2000-242, has been already decided by this Court;

12. that absent a court order to the contrary, Webb, Nessel, Turner, and Bates, and other at their direction, be restrained from any further interference with the church's use of its property;

13. that the Evangelistic Temple of Ada, Rodgers, Leach, Cauthen, and Davis should be awarded their reasonable attorney's fees for defending the Interpleader actions; and

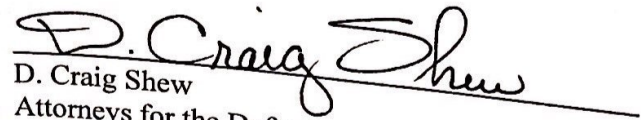
14. for any other relief the Court deems just and equitable.

Respectfully submitted,

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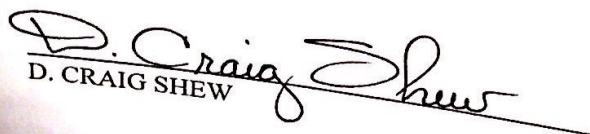
By:


D. Craig Shew
Attorneys for the Defendants

CERTIFICATE OF SERVICE

I certify that on the 23rd day of March, 2000, I hand delivered a true and correct copy of the foregoing instrument to the following person at the address indicated:

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Braly & Braly and Coyne
P. O. Box 2739
Ada, OK 74820


D. CRAIG SHEW